

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

AUG 15 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

J.T. COMPTON and NORMA VICKERS)
COMPTON JOINT IRREVOCABLE TRUST,)
Plaintiff,)
v.)
SUN LIFE ASSURANCE COMPANY OF)
CANADA,)
Defendant.)

CASE NO. 4:18cv528-KBG

This case assigned to District Judge Baker
and to Magistrate Judge Harris

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332 and 1441, Defendant Sun Life Assurance Company of Canada respectfully notifies the Court of the removal of the above-styled cause from the Circuit Court of Conway County, Arkansas, Civil Division 2, to the United States District Court for the Eastern District of Arkansas, Western Division, and says as follows:

I.

This action is being removed to federal court based upon diversity of citizenship under 28 U.S.C. §1332.

II.

On or about July 18, 2018, Plaintiff filed in the state court the above-entitled civil action, bearing Cause No. 15CV-2018-236 in the records and files of that Court.

III.

The aforesaid state court action is a suit of a wholly civil nature of which the United States District Court for the Eastern District of Arkansas, Western Division, has original jurisdiction under 28 U.S.C. § 1332 and is one that may be removed by Defendant pursuant to 28 U.S.C. §§ 1441(a) and (b).

IV.

The Court has subject matter jurisdiction over this matter because this is an action between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Among other things, Plaintiff's Complaint seeks a declaratory judgment regarding a life insurance policy that was issued by Defendant and for which the Plaintiff is the alleged beneficiary. The face amount of the life insurance policy is \$1,360,000.00. The cash surrender value of the life insurance policy is currently \$1,011,899.14. *See Declaration of Michelle A. Wilkosky (Ex. 1).* Thus, although Defendant denies that Plaintiff is entitled to any remedy, much less the remedy sought in its Complaint, the sum or value of the matter raised in Plaintiff's Complaint exceeds the statutory minimum of \$75,000.00. Plaintiff alleges that the settlors and beneficiaries of the trust are citizens of the State of Arkansas. Defendant is incorporated and has its principal place of business in Ontario, Canada, and its principal place of business in the United States is located in the State of Massachusetts. Therefore, this is a dispute between citizens of this State and a citizen or subject of a foreign state for which this Court has subject matter jurisdiction under 28 U.S.C. §1332(a)(2). Alternatively, this is a dispute between citizens of different States for which this Court has subject matter jurisdiction under 28 U.S.C. §1332(a)(1).

V.

This action is therefore one of which the United States District Court for the Eastern District of Arkansas, Western Division, has original federal question jurisdiction under 28 U.S.C. § 1332 and §§ 1441(a) and (b). Conway County, Arkansas is within the venue of the Western Division of the United States District Court for the Eastern District of Arkansas.

VI.

This petition is being filed pursuant to 28 U.S.C. § 1446 within thirty (30) days of service of the initial pleading in which a removable claim is asserted, and is removable in that:

- a. The time for filing this petition under 28 U.S.C. § 1446 has not expired; and
- b. The parties are a citizen of a State and a citizen or subject of a foreign state or, alternatively, are citizens of different States and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

VII.

Therefore, Defendant files this Notice of Removal of this action from the Circuit Court of Conway County, Arkansas, Civil Division 2, in which it is now pending, to the United States District Court for the Eastern District of Arkansas, Western Division. Attached to this Notice, marked Exhibit 2 and incorporated by reference, are true and correct copies of all process, pleadings, and orders served upon Defendant in this action. Attached as Exhibit 3 to this Notice is the Notice of Filing Notice of Removal, which will be filed in the Circuit Court of Conway County, Arkansas, Civil Division 2 after Defendant files this Notice of Removal.

WHEREFORE, Defendant notifies this Court of the removal of this action from the Circuit Court of Conway County, Arkansas to the United States District Court for the Eastern District of Arkansas, Western Division.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.


Audrey M. Calkins (TN BPR No. 30093)
6410 Poplar Avenue, Suite 300
Memphis, TN 38119
Phone: (901) 767-6160
Fax: (901) 767-7411
audrey.calkins@ogletree.com

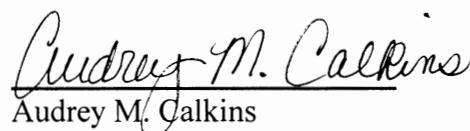
ATTORNEYS FOR DEFENDANT
SUN LIFE ASSURANCE COMPANY OF CANADA

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Notice of Removal* was served on all counsel of record by placing copies envelopes properly addressed to them and with sufficient first-class postage pre-paid and by email service where available:

Howard C. Yates
HOWARD C. YATES P.A.
108 S. Chestnut - P.O. Box 190
Morrilton, AR 72110

Attorney for Plaintiffs
J.T. Compton and Norma Vickers Compton Joint Irrevocable Trust


Audrey M. Calkins

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

J.T. COMPTON and NORMA VICKERS)
COMPTON JOINT IRREVOCABLE TRUST,)
Plaintiff,)
vs.) CAUSE NO.
SUN LIFE ASSURANCE COMPANY OF)
CANADA,)
Defendant.)

DECLARATION OF MICHELLE A. WILKOSKY

Michelle A. Wilkosky, pursuant 28 U.S.C. §1746(2), hereby declares under penalty of perjury the following:

1. I am more than 21 years of age and am competent to testify to the matters contained herein.
2. The statements contained in this Declaration are based on my personal knowledge and company information available to me in the normal course of my employment. If called as a witness, I could and would testify competently with respect thereto. I am making this declaration in support of a Notice of Removal of this matter to the United States District Court for the Eastern District of Arkansas, Western Division.
3. I am authorized as a Director, Operations, In Force Management, for Sun Life Assurance Company of Canada (“Sun Life”). My duties include maintenance of documents and information concerning individual life insurance policies issued by Sun Life. This includes information and documents related to a life insurance policy for which the owner and beneficiary is the James T. and Norma Jean Compton, Joint Irrevocable Trust.

EXHIBIT

1

4. I have reviewed Sun Life's records regarding the aforementioned life insurance policy and Sun Life's records reflect that the face amount of the policy is Two Millions Dollars (\$2,000,000.00) and the cash surrender value as of today is One Million Twelve Thousand Nineteen Dollars and sixty three cents. (\$1,012,019.63). This information is within my custody and control and is generated by Sun Life or received by Sun Life from reliable sources and was recorded at or near the time by, or from information transmitted by, someone with knowledge of that information. Making and retaining these records is a regular practice of Sun Life's business activity. I regularly rely on this information to carry out my duties.

Pursuant to 28 U.S.C. § 1746, the undersigned declares under the penalty of perjury that the foregoing is true and correct.

Executed this 13th day of August, 2018.



Michelle A. Wilkosky

35164681.1

HOWARD C. YATES, P.A.
ATTORNEY AT LAW
108 South Chestnut - Post Office Box 190
Morrilton, Arkansas 72110
Telephone Number: (501) 354-1505
Faximile: (501) 354-1507

Rebecca Chambers-Lewandowski, Assistant

July 19, 2018

Sun Life Assurance Company of Canada
Sun Life Centre
150 King St W
Toronto, ON M5H 4B6

*To: Counsel
Rec'd
July 31*

Received

AUG 01 2018

Law Department

RE: J.T. Compton and Norma Vickers
Compton Joint Irrevocable Trust v.
Sun Life Assurance Company of
Canada
Conway County Circuit Court
Case No. 15CV 2018-236

Gentlemen:

Please find enclosed herein a **Summons** directed to you with attached **Petition for Declaratory Judgment**, filed in the above styled cause in the Circuit Court of Conway County, Arkansas.

Pursuant to Federal Rules of Civil Procedure, you have **thirty (30) days** from this date in which to file an Answer or other responsive pleading in the Circuit Court of Conway County, Arkansas.

The receipt of this letter and attached documents has the same legal effect as does service of process or delivery of the enclosed papers by a Deputy Sheriff.

You are hereby advised that your failure to act within the time set by law may result in action and orders of the Court adverse to your interest.

Sincerely,



Howard C. Yates

HCY: lml

Enclosures: As stated.

CERTIFIED MAIL/RETURN RECEIPT
RESTRICTED DELIVERY #7013 0600 0002 3345 1263

EXHIBIT



IN THE CIRCUIT COURT OF CONWAY COUNTY, ARKANSAS

SUMMONS

PLAINTIFFS: J.T. COMPTON and NORMA VICKERS
COMPTON JOINT IRREVOCABLE TRUST CIVIL DIVISION: 2

vs. CASE NO. 15CV-18-236

DEFENDANT: SUN LIFE ASSURANCE COMPANY OF CANADA

PLAINTIFF'S ATTORNEY: HOWARD C. YATES
108 S. Chestnut - P.O. Box 190
Morrilton, AR 72110

THE STATE OF ARKANSAS TO THE DEFENDANT:

SUN LIFE ASSURANCE COMPANY OF CANADA
SUN LIFE CENTRE
150 KING STREET WEST
TORONTO, 72201

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) — or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas — you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are: **HOWARD C.YATES, P.O. BOX 190, MORRILTON, AR 72110.**

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

CLERK OF COURT

Address of Clerk's Office:

115 S. MOOSE STREET
MORRILTON, AR 72110

Tina Baker, D.C.
DARLENE MASSINGILL

[SEAL]

Date: 7-18-18

IN THE CIRCUIT COURT OF CONWAY COUNTY, ARKANSAS

SUMMONS

PLAINTIFFS: **J.T. COMPTON and NORMA VICKERS
COMPTON JOINT IRREVOCABLE TRUST** CIVIL DIVISION: ____

vs. CASE NO. 15CV-18-____

DEFENDANT: **SUN LIFE ASSURANCE COMPANY OF CANADA**

This summons is for: **SUN LIFE ASSURANCE COMPANY OF CANADA**

PROOF OF SERVICE

- I personally delivered the summons and complaint to the individual at _____
on _____; or
- I left the summons and complaint in the proximity of the individual by _____
after he/she refused to receive it when I offered it to him/her; or
- I left the summons and complaint at the individual's dwelling house or usual place of
abode at _____ with _____,
a person at least 14 years of age who resides there, on _____; or
- I delivered the summons and complaint to _____,
an agent authorized by appointment or by law to receive service of summons on behalf of
_____ on _____; or
- I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I served the
summons and complaint on the defendant by certified mail, return receipt requested,
restricted delivery, as shown by the attached signed return receipt.
- I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I mailed a
copy of the summons and complaint by first-class mail to the defendant together with two
copies of a notice and acknowledgment and received the attached notice and acknowledgment
form within twenty days after the date of mailing.
- Other: _____.
- I was unable to execute service because: _____
_____.

My fee is \$ _____.

To be completed if service is by a sheriff or deputy sheriff:

Date: _____

SHERIFF OF _____ COUNTY, _____

By: _____

Printed name, title, and badge number

To be completed if service is by a person other than a sheriff or deputy sheriff:

Date: _____

By: _____

Printed name

Address: _____

Phone: _____

Subscribed and sworn to before me this date: _____

Notary Public

My commission expires: _____

Additional information regarding service or attempted service:

IN THE CIRCUIT COURT OF CONWAY COUNTY, ARKANSAS
CIVIL DIVISION 2

J.T. COMPTON and NORMA VICKERS
COMPTON JOINT IRREVOCABLE TRUST

2018 JUL 18 PM 4:17
PLAINTIFF

VS. NO. 15CV-2018-236

SUN LIFE ASSURANCE COMPANY
OF CANADA

DEFENDANT

PETITION FOR DECLARATORY JUDGMENT

Comes now the Plaintiff, J.T. Compton and Norma Vickers Compton Irrevocable Trust, by and thru its Settlors and Beneficiaries, J.T. Compton and Norma Vickers Compton, and for its Petition for Declaratory Judgment, states:

(1) Plaintiff is a Trust created and existing under the laws of State of Arkansas. J.T. Compton and Norma Vickers Compton are the Settlors and Beneficiaries of the Trust and are residents of Conway County, Arkansas.

(2) Plaintiff obtained a life insurance policy on the lives of J.T. Compton and Norma Vickers Compton from Defendant, being Life Policy # 9292202T. Plaintiff is beneficiary of the policy.

(3) Certain disputes have arisen between Plaintiff and Defendant which should be resolved. These disputes are set forth below:

(a) The application and other documents given to Defendant by Plaintiff show the date of creation of Plaintiff as June 22, 1993. The date of creation of Plaintiff was July 26, 1993.

(b) Defendant's records reflect the Trustee is "Edward Massey". Plaintiff's Trust documents reflect the Trustee is "Edmund Massey".

(4) This Court should find that the correct date of creation of the Trust was July 26, 1993 and the date given of June 22, 1993 was a scrivener's error. Defendant's documents should be reformed to so reflect.

(5) The Court should find that the correct name of the Trustee is "Edmund Massey" and the name of "Edward Massey" was a scrivener's error. Defendant's documents should be reformed to reflect so.

(6) In addition, Edmund Massey is now deceased and Plaintiff should be permitted to name a new Trustee as authorized under the Trust.

Wherefore Plaintiff prays that this Court enter its Declaratory Judgment as set forth above and for all other proper relief.

**HOWARD C. YATES, P.A.
ATTORNEY AT LAW
108 S. Chestnut - P.O. Box 190
Morrilton, AR 72110
(501) 354-1505
Arkansas Bar NO. 76144**

BY: 
**Howard C. Yates,
Attorney For Plaintiff**

Howard C. Yates, P.A
Attorney at Law
P.O. Box 190
Morriston, AR 72110



Registered Mail™ | Courier Recommandé™

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SIGNATURE



TRACKING NUMBER

RE 262 697 009 US

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Sun Life Assurance Co. of Canada

Sun Life Centre
150 King St W
Toronto, ON M5H 4B6

U.S. POSTAGE
Sun Life

To: Legal
SunCode: 131N10
Dept: Legal
External Carrier: CPC - Registered
Carrier: EXPRESS
Sender Name:
DU
Sender Company: HOWARD C. YATES, P.A
Service Type:



RE262697009US

**IN THE CIRCUIT COURT OF CONWAY COUNTY, ARKANSAS
CIVIL DIVISION 2**

J.T. COMPTON and NORMA VICKERS)
COMPTON JOINT IRREVOCABLE TRUST,)
Plaintiff,)
v.) NO. 15CV-2018-236
SUN LIFE ASSURANCE COMPANY)
OF CANADA,)
Defendant.)

NOTICE OF FILING NOTICE OF REMOVAL

Defendant Sun Life Assurance Company of Canada (“Defendant”) has filed a Notice of Removal with the Clerk in the United States District Court for the Eastern District of Arkansas and removed this case to that Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. A copy of the Notice of Removal and its accompanying exhibits filed with the federal court is attached as Exhibit 1.

EXHIBIT

3

Date: August 14, 2018

OGLETREE, DEAKINS, NASH, SMOAK & STEWART,
P.C.

Audrey M. Calkins (BPR # 30093)
audrey.calkins@odnss.com
International Place, Tower II
6410 Poplar Avenue, Suite 300
Memphis, TN 38119
(901) 767-6160
(901) 767-7411 (Facsimile)

**ATTORNEY FOR DEFENDANT
SUN LIFE ASSURANCE COMPANY OF CANADA**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Notice of Filing Notice of Removal* was served on all counsel of record by placing copies envelopes properly addressed to them and with sufficient first-class postage pre-paid and by email service where available:

Howard C. Yates
HOWARD C. YATES P.A.
108 S. Chestnut - P.O. Box 190
Morrilton, AR 72110

Attorney for Plaintiffs
J.T. Compton and Norma Vickers Compton Joint Irrevocable Trust

Audrey M. Calkins